

Westfall, SSA

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*[Entitlement of Stepchildren to Allowances of Military Member]*

FILE: B-199433

DATE: December 29, 1980

MATTER OF: Lieutenant Commander Albert Dick

**DIGEST:** In evaluating a stepparent's contribution to the support of stepchildren to determine if they are "in fact dependent" on him for the purposes of 37 U.S.C. 401(2), the costs should be based upon more than general estimates, and incremental rather than pro rata costs should be used for housing and other family costs. The 2 stepchildren of a naval officer were found not dependent upon him for purposes of overseas travel and other allowances by the Navy since they receive \$856 each month in Social Security and Veterans Administration benefits. Since that sum appears adequate for the support and maintenance of two minor children, the Navy's finding will not be questioned.

This action is in response to a request for an advance decision as to whether Rexel and Reginald Suba, stepchildren of Lieutenant Commander Albert G. Dick, USN, are in fact dependent upon him for purposes of overseas travel and other allowances. The request was submitted by the Director of the Navy Family Allowance Activity, Cleveland, Ohio, by letter dated May 27, 1980, and was forwarded through the Department of Defense Military Pay and Allowance Committee, where it was assigned Submission No. DO-N-1349. We find that Reginald and Pexel Suba are not "in fact dependent" upon their stepfather.

Section 401(2) title 37, United States Code, and Joint Travel Regulations, Volume I, Appendix J, define the term "dependent", with respect to a member of the uniformed services, to include an unmarried stepchild under the age of 21 who is "in fact" dependent upon the member. The record reflects that in 1976 the Director of the Navy Family Allowance Activity determined that Commander Dick's stepchildren were not in fact dependent upon him since, as dependents of their deceased father, also a former Navy member, the two boys received \$552.80 each month in Veterans' Administration

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(VA) and Social Security benefits, a sum which virtually covered their average monthly cost of support of \$600 as reported by Commander Dick. Four years later, on May 19, 1980, Commander Dick submitted a second request for a determination of dependency. According to the dependency certificate prepared by his wife, the mother of Reginald and Rexel, although the combined VA and Social Security income of the boys had risen to \$856.20 as of May 19, 1980, their monthly cost of support had increased much more dramatically, and totalled \$1,257 by May 1980.

Mrs. Dick points out that although the boys receive VA and Social Security payments each month, they are fully dependent upon her husband, Commander Dick, since those checks are deposited in trust accounts for the boys' college educations. However, in a similar case, we held that two stepchildren of a Marine Corps officer, each of whom received monthly payments from the VA and the Social Security Administration, the entire sum of which was deposited in a trust fund, were not in fact dependent upon the member, since the officer and his wife had elected to place the funds in trust, rather than being directed to do so by statute or regulation. The funds were viewed as available for the support of the children. 34 Comp. Gen. 625 (1955). See also 34 Comp. Gen. 694 (1955); B-150452, February 1, 1963. Accordingly, the entire \$856.20 in Social Security and VA benefits must be regarded as available for the support of the two boys.

Commander Dick's legal assistance attorney of the Navy Legal Service Office also argues that factors other than financial ought to be taken into consideration when making a determination as to dependency, such as the maintenance of a stable and loving family unit. However, we have no way of evaluating such nonfinancial factors and, what we are considering here, as a matter of fact, is determining dependency for the purpose of entitlement to allowances which are intended to cover financial expenses. Thus, we have specifically held that:

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"\* \* \* Where sufficient funds are available from sources other than the member, either directly or indirectly, for the support, maintenance and education of a stepchild or an adopted child, the child is not in fact dependent upon the member. The facts that the child may live with the member, that its transportation is necessary incident to the member's change of station, or that the amount contributed by the member improves the living conditions of the child, do not of themselves make the child in fact dependent upon the member." 34 Comp. Gen. 193, 195.

Therefore, though we recognize the value of a stable and loving home environment, such as the one with which Commander Dick and his wife have provided their boys, we cannot, on that basis alone, find that Reginald and Rexel are dependent upon Commander Dick.

Finally, we turn to the schedule submitted by the Naval Legal Service Office which details the monthly expenditures and source of funds estimated for fiscal 1980 for the two stepsons as follows:

<u>Monthly Basic Necessities Expenses</u>	(combined totals for both stepsons)
Food (@ \$6.25 per day per child)	\$387.50
Housing (includes estimated share of utilities and maintenance based on total estimated monthly housing costs of \$650)	\$215.00
Medical (includes eyeglasses, dental care, medication and treatment of Rexel's skin disease)	\$100.00

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Transportation Costs (trips to doctors, dentists, schools, barbers, for shopping and miscellaneous - note Mrs. Dick unable to drive and cabs and bus fare are often needed)		\$130.00
Personal Hygiene Costs (includes haircuts, soap, shampoo, toiletries, etc.)		\$ 55.00
Household Expenses (includes proportionate share of household cleaning costs, laundry, sheets, towels, pillows, etc.)		\$ 60.00
Proportionate Share of Household Furnishings (estimate \$2500.00 of furnishings with a 4-year life expectancy: beds, mattresses, desks, dressers, chairs, rugs, curtains, bookcases, etc.)		\$ 60.00
Clothing (based on past usage, current prices, and the rate at which clothes are outgrown)		\$199.00
Proportionate Share of Wear and Tear on General Household Furnishings (estimated)		\$ 16.50
		<u>\$1223.00</u>
<u>Monthly Source of Funds</u> (% of total costs of \$1223.00)		
V.A. Benefits	19%	\$237.00
Social Security Benefits	51%	\$619.00
Monies Provided by LCDR Dick	30%	\$367.00
	<u>100%</u>	<u>\$1223.00</u>

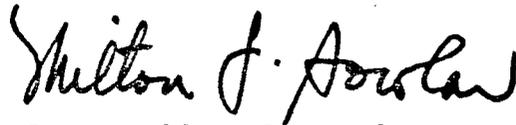
Where a stepchild has an independent source of support, the member must show a personal contribution to the stepchild's support, maintenance and education, which would make the child substantially

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dependent upon the member for his or her welfare. B-193161, February 22, 1979. In evaluating the step-parent's contribution something more than a general estimate of costs is required. Further, it seems inappropriate to use pro rata costs for the family cost of housing and incidental costs. It would seem more in keeping with the circumstances to use incremental costs for such items.

Concerning the estimates set forth above, in a case virtually identical on its facts to the one at issue here, we held that two stepchildren of a member who received substantial monthly VA and Social Security benefits were not dependent on the member since those benefits, which could be used to provide the basic necessities of shelter, clothing, food and health care, appeared adequate for the support and maintenance of two children. B-193161, February 22, 1979. We think that the same holds true for the \$856 per month which Commander Dick's two stepsons currently receive in VA and Social Security benefits.

The Navy Family Allowance Activity is primarily responsible for determining whether stepchildren are in fact dependent upon a member of the Navy for purposes of paying the allowances in question. In view of the facts of this case we find no basis for questioning their finding that Reginald and Rexel Suba are not in fact dependent upon their stepfather, Commander Dick, for purposes of overseas travel and other allowances.



For the Comptroller General  
of the United States